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part of the subject. To the same point are *Mo., etc., Ry. v. Harriman Bros.*, 227 U. S. 657; *Chi., R. I. & P. Ry. v. Cramer*, 232 U. S. 490; *Boston & M. Ry. v. Hooker*, 232 U. S. 97. The principal case, giving the shipper a common-law remedy in spite of his special contract, is not inconsistent with the provisions of the Act; it is entirely in harmony with the purposes of the Act, since the carrier by his own wrong had prevented the formation of a valid and binding contract limiting its liability.

CARRIERS—DISCRIMINATION.—The defendant had filed with the Public Utilities Commission of the state its schedule of rates, together with the stoppage privileges accorded to shippers of livestock between different points. The plaintiff made an intra-state shipment of livestock under a contract according him the right of stoppage at a point not included in the schedules filed with the commission. The plaintiff sued for damages resulting from a failure to stop at the point agreed upon in the contract. The court held, that the right to stop a shipment of cattle in transit to test an intermediate market is a valuable privilege; and that a special privilege of stoppage granted to one shipper, which is not granted to others under the filed schedules, is a discrimination within the meaning of the statute. The agreement was therefore void, and no recovery could be had for failure to perform it. *Mollohan v. Atchison, T. & S. F. Ry.* (Kan. 1916), 154 Pac. 248.

The principal case is in accord with Federal and State cases where similar statutes are in force. It is the duty of the railway company under the common law, and by state and federal statutes, to extend to all persons, without favoritism or discrimination, equal opportunities and facilities for receiving and shipping freights of all kinds of the same class. *Toledo & O. C. R. Co. v. Wren*, 78 Oh. St. 137. The ELKINS ACT of Feb. 19, 1903, forbade any person to give or receive any rebate, concession, or discrimination in respect of transportation of any property in interstate commerce, whereby any such property shall be transported at a less rate than named in the tariffs filed and published by such carrier, or whereby any other advantage is given or discrimination is practiced. Under this act damages have been awarded for a discrimination in furnishing cars in favor of competitive points against non-competitive points. *Hawkins v. Wheeling & L. E. R. Co.*, 9 I. C. C. Rep. 212. So also it has been held that the following cases were within the act: Undue discrimination against a shipper of hay and grain in favor of competitors, some of whom had elevators, while he had none (*Eaton v. C. H. & D. Ry.*, 11 I. C. C. Rep. 619); failure by a railway to furnish cars to a shipper of cross-ties, while it furnished cars to its own agents for the shipping of ties (*Paxton Tie Co. v. Detroit So. Ry.*, 10 I. C. C. Rep. 422). A shipper has not only the right to a fair proportion of cars, but may object to a competitor receiving in excess of his fair proportion. *Hillsdale Coal and Coke Co. v. Pa. Ry.*, 19 I. C. C. Rep. 356. In *Chicago & A. Ry. v. Kirby*, 225 U. S. 155, it was held that it was an undue and unreasonable preference forbidden by the INTERSTATE COMMERCE ACT to accord a shipper a special contract by which the carrier undertook to

expedite a stock shipment by special fast stock trains, which privilege was not ordinarily accorded other shippers. *Clegg v. St. L., etc., Ry.*, 203 Fed. 971. A discrimination in rates in favor of coal shipped for the use of a railway transporting it was held to be a violation of the act. *Interstate Commerce Commission v. B. & O. Ry.*, 225 U. S. 326. The broad purpose of the COMMERCE ACT, to compel the establishment of reasonable rates and uniform application, would be defeated by sanctioning special contracts giving special privileges to particular shippers; and to guarantee a reduced rate, a particular connection, transportation by a special train, or special stoppage privileges, amounts to the giving of a preference, where such privileges are not open to all and are not provided for in the published tariffs. On the other hand, it has been held that the INTERSTATE COMMERCE ACT does not attempt to equalize fortune, opportunities, or abilities; it contemplates payment of reasonable compensation by carriers for services rendered and for instrumentalities furnished by owners of the property transported. Accordingly it has been held that contracts made by various railroads for elevation expenses of grain at points of trans-shipment, at rates not exceeding those fixed by the commission as reasonable, are not illegal discriminations or rebates when paid to owners of elevators on their own grain, although such owners performed services other than those paid for at the same time to their advantage. *Interstate Commerce Commission v. Peavey & Co.*, 222 U. S. 42. It was also held that where the carrier leases a terminal for public use from a shipper near that shipper's establishments, and also contracts with that same shipper for lighterage service of goods entering the terminal, it is not an unlawful discrimination, although similar contracts are not awarded to other shippers in the vicinity, and although that particular shipper is paid for lighterage services on its own goods. *U. S. v. B. & O. Ry.*, 231 U. S. 274. It is often difficult to determine what constitutes an unlawful discrimination, and each case must be decided more or less upon its own facts.

CONSTITUTIONAL LAW—DISCRIMINATION AGAINST LABOR UNIONS.—A statute in Ohio (Gen. Code, § 12943) made it a criminal offense for an employer to discharge or threaten to discharge an employe because of his connection with a labor union. In an action to punish the defendant for a violation of this statute, the defense was that the statute was unconstitutional as denying to the employer due process of law. *Held*, that the statute was unconstitutional. *Jackson v. Berger* (Ohio 1915), 110 N. E. 732.

The opinion of the majority in the above case was that it was controlled by the case of *Coppage v. Kansas*, 236 U. S. 1, L. R. A. 1915C, 960. This case is the first that has come before the courts since the *Coppage* case was decided, and revives the discussion as to whether that case was right. Two of the judges in the Ohio case, WANAMAKER and DONOHUE, dissented, basing their opinions on practically the same grounds as those advanced by JJ. DAY, HUGHES, and HOLMES, who dissented in the *Coppage* case. For a review of the *Coppage* case and a resume of the cases and of the general situation, see 13 MICH. LAW REV. 498.